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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/049,867	07/02/2002	Richard Neumann	2345/173	2445
26646	7590	02/24/2004		
KENYON & KENYON ONE BROADWAY NEW YORK, NY 10004			EXAMINER SUAREZ, FELIX E	
			ART UNIT 2857	PAPER NUMBER

DATE MAILED: 02/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/049,867	NEUMANN ET AL.
	Examiner	Art Unit
	Felix E Suarez	2857

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 02 July 2002.

2a) This action is FINAL.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 12-21 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 12-21 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 02 July 2002 is/are: a) accepted or b) objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. §§ 119 and 120

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

    1. Certified copies of the priority documents have been received.

    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

    a) The translation of the foreign language provisional application has been received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____.
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.	6) <input type="checkbox"/> Other: _____

## DETAILED ACTION

### ***Minor informalities***

1. The disclosure is objected to because of the following informalities:

Page 3, claim 15 line 4 of the claim the phrase "model" should be –  
modem—.

Correction is required.

### ***Drawings***

2. The drawings are objected to because:

In Fig. 1, all blocks are not labeled.

Correction is required.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in–  
(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or  
(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this

application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

3. Claims 12-21 are rejected under 35 U.S.C. 102(e) as being unpatentable over Reisman (U.S. Patent No. 6,594,692).

With respect to claims 12 and 21, Reisman teaches a system (or method) for testing the load state of at least one device in the case of a load by a plurality of users, the device being connected to a communications network based on an IP standard, comprising:

at least one programmable control device having an assigned memory device (see col. 10, lines 32-63), in which a plurality of session scripts is able to be stored (see col. 14, lines 32-65 and col. 19, lines 14-25), which each contain an initialization procedure, a predefined test procedure, and a termination procedure (see col. 18, lines 21-56 and col. 16 lines 16-22);

at least one session computer connected to the control device and having a plurality of mutually independent connection interfaces (see col. 12, line 57 to col. 13 line 24), to each of which is assigned a script-processing device for executing a session script assigned by the control device, a plurality of script-processing devices (see col. 14, lines 36-49) being able to simultaneously establish independent IP connections via the connection interfaces assigned to them, to a device to be tested, under the control of the session scripts suitably assigned by the control device, initiate test procedures, and disconnect the IP connections (see col. 60, lines 6-32).

With respect to claim 13 Reisman teaches that in each session computer, a session-management device is implemented, which supplies each selected script-processing device with the session script allocated to it (see col. 19, lines 14-25).

With respect to claim 14 Reisman teaches that each connection interface of a session computer has an analog or digital modem assigned thereto (see col. 23, line 53 to col. 24, line 5).

With respect to claim 15 Reisman teaches that each connection interface of a session computer is part of an interface card and is connected to a concentrator, or each connection interface has an analog or digital modem assigned thereto (see col. 23, line 53 to col. 24, line 5).

With respect to claim 16 Reisman teaches a plurality of session computers are linked via a backbone network to the control device (see col. 36 line 56 to col. 37 line 13).

With respect to claim 17 Reisman teaches that each session computer includes a memory for storing status data of each device to be tested and results

and preset status messages of each initiated test procedure (see col. 16, lines 4-23).

With respect to claim 18 Reisman teaches that assigned to the control device are a display device for displaying the status data on each device to be tested, stored in each session computer, and the results and status messages of each initiated test procedure, an analysis device, as well as a keyboard (see col. 42 line 54 to col. 43 line 24).

With respect to claim 19 Reisman teaches that the communications network based on an IP standard is the Internet or an Intranet, and the devices to be tested are access routers and/or servers (see col. 60, lines 6-17).

With respect to claim 20 Reisman teaches that a session script may include a user ID, a user password, at least one service based on the IP standard, defined time sequences, repetition rates, and/or the destination address of the device to be tested (see col. 17 line 63 to col. 18 line 27 and col. 60, lines 6-17).

### ***Conclusion***

#### ***Prior Art***

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Faris et al. [U.S. Patent No 6,659,861] describes global synchronization unit.

Hong et al. [U.S. Patent No 6,563,821] describes a system manager controller coupled to the plurality of connection segments, and receives status information.

Bowman-Amuah [U.S. Patent No 6,556,659] describes an internet router capable of processing packets based on protocols, including IP.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Felix Suarez, whose telephone number is (703) 308-4926. The examiner can normally be reached on weekdays from 8:30 a.m. to 5:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marc Hoff can be reached on (703) 308-1677. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-7382 for regular communications and (703) 308-7382 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1782.

January 22, 2004  
F.S.

*Marc Hoff*  
MARC S. HOFF  
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TECHNOLOGY CENTER 2600